

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRIMINAL MISC.NO.38876 M OF 2004

DATE OF DECISION: MAY 11, 2007

Sudesh Vij

.....Petitioner

VERSUS

Arun Sharma @ Pappu and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Arun Bakshi, Advocate,
for the petitioner.

Mr. Harsh Aggarwal, Advocate,
for respondent No.1.

RANJIT SINGH, J.

The petitioner, who has been summoned for an offence under Section 500 I.P.C. on a complaint filed by respondent No.1, has filed this petition for quashing of the complaint as well as of the summoning order.

The petitioner, claiming himself to be a youth congress leader and Vice President of Punjab Pradesh Youth Congress, has impugned the order summoning him to face proceedings for having defamed respondent No.1. The petitioner has raised the grievance that the complaint would not reveal any allegation of defamation and, thus, he is wrongly summoned, ignoring the well

settled and understood principle in this regard. He is further aggrieved against the order passed by Additional Sessions Judge, Jalandhar, dismissing his revision petition.

On 26.4.2001, complainant-respondent No.1, being a President of Nyay Morcha Punjab staged a dharna alongwith some other members of the Morcha in front of the office of Deputy Commissioner, Jalandhar, to protest against the illegal acts of the S.H.O., Police Station Division No.4. The news about this dharna was covered by various news papers and electronic news channels. On 27.4.2001, the petitioner statedly made a false statement to the Press Reporters against the complainant, which was published in Punjab Kesari. The statements of the petitioner, which were published, are said to be contrary to the facts as covered by other news papers and accordingly, this false news items harmed the reputation of respondent No.1, leading to his defamation. It is further alleged that on 28.4.2001, the petitioner again made a false statement before the Press Reporters against respondent No.1, which was published in Punjab Kesari with the similar result, leading to defamation of respondent No.2. This was allegedly repeated on 29.4.2001 and 1.5.2001 with identical results. Respondent No.1 accordingly filed a complaint dated 9.6.2001 against the petitioner, newspapers and its correspondents under Sections 499, 500 and 506 IPC. Respondent No.1 thereafter led preliminary evidence by examining himself as CW1. He reiterated the facts mentioned in the complaint and the fact that the news items published by various news papers on the abovesaid dates against the complainant were false, contrary to the facts and had resulted in harming his reputation and,

thus, was defamatory in nature. Judicial Magistrate Ist Class, Jalandhar, after taking into consideration the preliminary evidence and the news items produced before him, summoned the petitioner under Section 500 IPC. Aggrieved against the summoning order, the petitioner had filed a revision before the Additional Sessions Judge, Jalandhar, who dismissed the same on 19.1.2004, leaving it open to the petitioner to plead before the Magistrate that process against him ought not to have been issued. The Revisional Court also observed that Magistrate may drop the proceedings, if he is satisfied on re-consideration of the complaint and on the statement of the complainant that no offence was made out, for which the accused could be tried. Thereafter, the petitioner has filed the present petition under Section 482 Cr.P.C., seeking quashing of the complaint, summoning order and the order passed by the Additional Sessions Judge, refusing to exercise revisional jurisdiction.

On notice being issued to respondent No.1, reply has been filed on his behalf. A preliminary objection was raised in regard to maintainability of the present petition averring that it is a second revision against the summoning order, which is being exercised under the garb of this petition under Section 482 Cr.P.C. Other averments made in the petition have also been denied and it is accordingly pleaded that the present petition filed by the petitioner be dismissed.

I have heard the learned counsel for the parties.

Learned counsel for the petitioner submits that the complainant has only made allegation of false statement and had not placed any evidence on record to show that publication of the news

resulted in his defamation or lowering reputation in the eyes of public to attract the provisions of Section 500 IPC. In this regard, the counsel has referred to the averments in the complaint. Counsel for the petitioner then submits that his case would be covered by Explanation 4 to Section 499, which provides that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as graceful. Reliance is also placed on Ninth Exception of Section 499 IPC to plead that no offence would be made out against him for which he could have been summoned by the Magistrate. This exception provides that it is not defamation to make any imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. It is, thus, seen that the petitioner basically has attacked the summoning order on the ground that respondent No.1 did not lead evidence to prove the press report and the fact that this press report even if true had defamed the said respondent.

On the other hand, counsel appearing for respondent No.1 would controvert all these submissions made in this regard. He would say that the petitioner has not only stated that the news item attributed to respondent No.1 was false but he had specifically given evidence that this was to defame him.

It would be appropriate to make reference to the exact words used to get an indication if this could result in any defamation of respondent No.1. As pointed out by counsel for respondent No.1, the offending words, which defamed him, as can be seen from the news item, are as under:-

“Shiv Sena (Bal Thackrey) Punjab also strongly condemned the action of Sh.Pappu for disturbing the peace of the city and while giving a memorandum to the DC and SSP demanded the stoppage of such anti-social activities. The Chief Vice President of Shiv Sena (Bal Thackrey) Punjab – Vinay Jalandhari, Secretary, Dr.Kuldip Sharma and District President Rajnish Kumar Mintoo, Karanbir Riaz, Parshotam Chand Fauji, Devinder Arora, Tarlochan Nath and Jagdish Dhall in a joint statement said that Pappu for cheap popularity is trying to poison the atmosphere of the city. On 21st of April, the above mentioned fake leader in support of his illegal demand gave dharna before Police Station No.4 and tried to get a person using derogatory remarks against Balmiki Society released.

The above mentioned fake leader for his leadership made a demonstration against Police Station No.4 and tried to put pressure on SHO Nirmal Singh but SHO Nirmal Singh without any pressure acted impartially and at that Pappu by using his cheap political tactics created rift between the reporters and the police.

Vinay Jalandhari said that the job of Pappu is first to get

people fight and thereafter by taking some money to get the matter settled. He is doing the alleged business. He said that Pappu is now trying to disturb the peaceful atmosphere of the city.

He made a demand to the Administration that it is necessary to enquire into the activities of the said fake leader so that it can be found out that on whose instance he is repeatedly trying to disturb the peaceful atmosphere of the city. Vinay Jalandhari warned the Police Administration that in case the fake leader with the help of petty leaders stages any dharna or demonstration to disturb the peace of the city, then Shiv Sena (Bal Thackrey) would give a befitting reply to him. He further demanded that Pappu should be arrested in public interest. The Association President Sh.Vijay Sahota said that our country is country of different religions and we respect to but in our society some bad elements do not avoid to speak against a particular religion for fulfillment of self-interest.

Sh.Pappu by way of deep rooted plans has given political protection to the persons who have used derogatory words against Balmiki Society and he has staged a dharna in support of his persons. He has hurt the feelings of Balmiki Samaj. This is likely to arouse the public feelings. Sh.Sahota demanded that in order to protect the peace of the city such anti-social elements should be crushed before it raises their head.”

In support of the abovesaid allegations, which according to respondent No.1, would be defamatory in character, he appeared as a witness and reiterated the whole facts mentioned in the complaint. In addition, he also produced on record the newspaper reports dated 14.10.2000, 25.4.2001, 26.4.2001 and 27.4.2001. These news items were stated to be contrary to the facts and as such these had harmed the reputation of complainant-respondent No.1. Taking this evidence into consideration, the Magistrate has summoned the petitioner viewing that at this stage evidence of the complainant is unrebutted and unchallenged. Attacking the summoning order, learned counsel for the petitioner would rely upon **Harishchandra Prasad Mani & Others Vs. State of Jharkhand & another**, JT 2007 (3) SC 229 to say that where there is not even an iota of evidence or material on record, cognizance cannot be taken merely on suspicion. This is a case where the complainant alleged that one Rajnish Kumar was killed by poisoning. Hon'ble Supreme Court, after noticing that there was not an iota of material that any poison was administered to said Rajnish Kumar and there is no medical evidence showing that the dead body of Rajnish Kumar had any poisoning, held that the cognizance was taken on pure conjecture and surmises. The Supreme Court in this case referred **R.P.Kapur Vs. State of Punjab**, (1960) 3 SCR 388, **State of Haryana Vs. Bhajan Lal**, JT 1990 (4) SC 650, **Janta Dal Vs. H.S.Chowdhary**, JT 1991 (3) SC 497, **Raghubir Saran (Dr.) Vs. State of Bihar**, (1964) 2 SCR 336, **State of Karnataka Vs. M.Devendrappa**, JT 2002 (1) SC 213 and **Zandu Pharmaceutical**

Works Ltd. Vs. Mohd. Saraful Haque, JT 2004 (9) SC 486, to notice that cognizance cannot be taken unless there is atleast some material indicating guilt of the accused. The Supreme Court in the case of Harishchandra Prasad Mani (supra) ultimately held as under:-

“14. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.”

To my mind, the ratio laid down in Harishchandra Prasad Mani (supra) cannot be applied to the facts of the present case. In the instant case, material is placed on record by way of evidence on oath given by the complainant. In this background, it can not be said that there is not even an iota of evidence as was noticed by Hon'ble Supreme Court in the referred case. The observations of the Hon'ble Supreme Court would also indicate that what is required to be seen at this stage is that there is some material implicating the accused. Further Cognizance cannot be taken merely on the basis of suspicion. Here the cognizance has not been taken merely on the basis of suspicion as was the case before the Hon'ble Supreme Court. In the present case, there is sufficient material on record to form prima-facie view in regard to commission of offence. Counsel

for the petitioner would then refer to **Jawaharlal Darda and others Vs. Manoharrao Ganpatrao Kapsikar and another**, AIR 1998 Supreme Court 2117. This is a case where the proceedings of assembly containing the statement made by Minister was published by the accused in a newspaper in a good faith. In this background, the Hon'ble Supreme Court held that it can not be said that accused intended to harm the reputation of the complainant and that the offence of defamation is not made out. While so holding, the Hon'ble Supreme Court observed that the news item merely disclosed what happened during the debate which took place in the Assembly. Noticing that the accused in the said case had published in its newspaper an accurate and true report of the proceedings in the assembly and so, it can not be said that he intended to harm the reputation of the complainant. Present one is not a case where any proceedings of assembly are being published to attract a plea of bonafide. Here is a case of scathing attack by the petitioner on the character and conduct of respondent No.1. Whatever defences which are available to him with which he can justify such an allegation, cannot be gone into while exercising jurisdiction under Section 482 Cr.P.C. The matter will have to be seen by the trial court to find if the allegation, as made, is amounting to defaming respondent No.1 and necessary consequences accordingly would follow. It can not be said that prima-facie nothing is made out against the petitioner to quash the complaint or the summoning order. Counsel for the respondent has referred upon **M.N.Damani Vs. S.K.Sinha and others**, AIR 2001 Supreme Court 2037 to say that where a private

complaint alleging that respondents made imputations against complainant is supported by a sworn statement of the complainant and also from documents produced by him indicating that respondent had made imputations intending to harm or knowing or having reasons to believe that such imputation would harm the reputation of the complainant, prima-facie case can be said to have been made out against the respondent. The Hon'ble Supreme Court in this case further observed that High Court can not at this stage say that there was no reasonable prospect of conviction resulting in case after trial. It was further observed that question whether imputations were made in good faith, in what circumstances, with what intention etc. are to be examined on the basis of evidence in the trial and hence, the trial must go on. Quashing of the complaint was held not proper in this case. In this very case, the Hon'ble Supreme Court dealt with the aspect of Exception 9 of Section 499 IPC. As observed by the Hon'ble Supreme Court, even if it is assumed that imputations made could be covered by the said exception, several questions would still remain to be examined i.e. whether such imputations were made in good faith, in what circumstances with what intention etc. As observed by the Supreme Court, all these things can be examined on the basis of evidence at the trial. The Magistrate appears to be justified in observing that uncontroverted allegations as made in the complaint and supported by the evidence given by the complainant on oath, prima-facie established the offence. No special features in this case were pointed out or urged to say that it is not expedient and not in the interest of justice to permit prosecution to continue. It can not be said at this stage that there is no reasonable prospect of

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conviction, resulting in the case after trial. Accordingly, no case for quashing the proceedings in this case is made out.

The present petition would stand dismissed.

**May 11, 2007
khurmi**

**(RANJIT SINGH)
JUDGE**